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Elections to fill vacancies in principal organs: election of a member of the International Court of Justice

Security Council
Sixty-fifth year

Election of a member of the International Court of Justice

Memorandum by the Secretary-General

I. Introduction

1. By a letter dated 29 April 2010, a certified copy of which was forwarded to the attention of the Secretary-General under the cover of a letter of 3 May 2010 from the President of the International Court of Justice, Judge Thomas Buergenthal (United States of America) informed the President of the Court, pursuant to Article 13, paragraph 4, of the Statute of the Court, of his resignation as a member of the Court effective 6 September 2010. A vacancy in the Court therefore will occur on 6 September 2010.

2. Judge Buergenthal was elected as a member of the Court on 2 March 2000 and was re-elected from 6 February 2006. His current term of office would have expired on 5 February 2015. According to Article 14 of the Statute of the Court, the vacancy shall be filled by the same method as that laid down for the regular election, and the Secretary-General shall, within one month of the occurrence of the vacancy, issue the invitations for nominations provided for in Article 5 of the Statute. According to Article 5, paragraph 1, of the Statute, the invitations for nomination have to be made at least three months before the date of the election, which is, pursuant to Article 14, to be fixed by the Security Council.

3. By a note dated 27 May 2010 addressed to the Security Council (S/2010/255), the Secretary-General referred to Judge Buergenthal's letter of resignation and drew the attention of the Security Council to Article 14 of the Statute of the Court regarding fixing the date of the election to fill the resulting vacancy in the Court. Pursuant to Article 14 of the Statute of the Court, the Security Council decided, by its resolution 1926 (2010), that the election to fill the vacancy should take place on 9 September 2010 at a meeting of the Council and at a meeting of the General Assembly at its sixty-fourth session.

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4. Pursuant to Article 5, paragraph 1, of the Statute of the Court, the Secretary-General, in a communication dated 3 June 2010, invited the national groups of States parties to the Statute of the Court to undertake the nomination of persons in a position to accept the duties of a member of the Court. The Secretary-General further requested that nominations be received no later than 12 August 2010. The nomination received by that date and the curriculum vitae of the candidate are transmitted in separate documents (A/64/900-S/2010/443 and A/64/901-S/2010/444, respectively). The name of the candidate will appear on the ballot papers to be distributed during the election.

5. Article 15 of the Statute of the Court provides that a member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of the predecessor's term. The member elected to replace Judge Buergenthal will thus serve until 5 February 2015.

6. The current composition of the Court and the procedure in the General Assembly and the Security Council for filling the vacancy are described below.

II. Composition of the International Court of Justice

7. The present composition of the International Court of Justice is as follows:

President:
Hisashi Owada (Japan)*

Vice-President:
Peter Tomka (Slovakia)*

Judges:
Xue Hanqin (China)*
Abdul G. Koroma (Sierra Leone)*
Awn Shawkat Al-Khasawneh (Jordan)***
Thomas Buergenthal (United States of America)**
Bruno Simma (Germany)*
Ronny Abraham (France)***
Kenneth Keith (New Zealand)**
Bernardo Sepúlveda-Amor (Mexico)**
Mohamed Bennouna (Morocco)**
Leonid Skotnikov (Russian Federation)**
Antônio A. Cançado Trindade (Brazil)***
Abdulqawi Ahmed Yusuf (Somalia)***
Christopher Greenwood (United Kingdom of Great Britain and Northern Ireland)***

* Term of office expires on 5 February 2012.

** Term of office expires on 5 February 2015.

*** Term of office expires on 5 February 2018.

III. Procedure in the General Assembly and in the Security Council

8. The election will take place in accordance with the following:

(a) The Statute of the Court, in particular Articles 2 to 4, 7 to 12 and 14;

(b) Rules 150 and 151 of the rules of procedure of the General Assembly;

(c) Rules 40 and 61 of the provisional rules of procedure of the Security Council.

9. On the date of the election, the General Assembly and the Security Council will proceed, independently of one another, to elect one member of the Court to fill the vacancy (Art. 8 of the Statute).

10. According to Article 2 of the Statute, judges are to be elected, regardless of their nationality, from among persons of high moral character who possess the qualifications required in their respective countries for appointment to the highest judicial offices or are jurisconsults of recognized competence in international law. Article 9 requires electors to bear in mind not only that the person to be elected should individually possess the qualifications required, but also that, in the body as a whole, the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

11. The candidate who obtains an absolute majority of votes in both the General Assembly and the Security Council will be considered as elected (Art. 10, para. 1, of the Statute).

12. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors whether or not they vote or are allowed to vote. The electors in the General Assembly are all 192 Member States. Accordingly, on the date of the present memorandum, 97 votes constitute an absolute majority in the Assembly for the purpose of the present Court election.

13. In the Security Council, eight votes constitute an absolute majority, and no distinction is made between permanent and non-permanent members of the Council (Art. 10, para. 2, of the Statute).

14. Only those candidates whose names appear on the ballot papers are eligible for election. The electors in the General Assembly and in the Security Council will indicate the candidate for whom they wish to vote by placing a cross against the name on the ballot paper. Each elector may vote for only one candidate.

15. At the 915th plenary meeting of the General Assembly, on 16 November 1960, a procedural discussion took place as to whether rule 94 (then rule 96) of the rules of procedure of the Assembly should be applied in elections to the International Court of Justice. That rule lays down a procedure for restricted ballots in the event that, after the first ballot, the requisite number of candidates have not obtained the required majority. The Assembly decided that the rule did not apply to elections to the Court, and it proceeded to elect the requisite number of candidates by a series of unrestricted ballots. That decision has been followed consistently.

16. If, in the first ballot in either the General Assembly or the Security Council, no candidate receives an absolute majority, a second ballot will be held and balloting will continue in the same meeting until a candidate has obtained the required

majority (rule 151 of the rules of procedure of the Assembly and rule 61 of the provisional rules of procedure of the Council).

17. Cases have arisen in the Security Council in which more than the required number of candidates have obtained an absolute majority on the same ballot. The practice followed by the Council has been to hold a new vote on all the candidates, and in such cases the President of the Council has made no notification to the President of the General Assembly until only the required number of candidates, and no more, had obtained an absolute majority in the Council.

18. When a candidate has obtained the required majority in one of the organs, the President of that organ will notify the President of the other organ of the name of that candidate. Such notification is not communicated by the President of the second organ to the members until that organ has itself given a candidate the required majority of votes.

19. If, upon comparison of the name of the candidate so selected by the General Assembly and the Security Council, it is found that the result is different, the Assembly and the Council will proceed, again independently of one another, in a second meeting and, if necessary, a third meeting to elect one candidate by further ballots, the results again being compared after one candidate has obtained an absolute majority in each organ. If necessary, the above procedure will be repeated until the General Assembly and the Security Council have given an absolute majority of votes to the same candidate.

20. If, however, after the third meeting, the vacancy still remains unfilled, the special procedure set out in Article 12 of the Statute of the Court may be resorted to at the request of either the General Assembly or the Security Council.